

equivalent requirement be established for **DTV** boosters **used** as part of a distributed transmission system? Should there be different a requirement if **DTV** boosters used in conjunction with a distributed transmission system are given primary status?

103. Power, antenna height and emission mask. If multiple **DTV** booster stations can be used to replace, or significantly augment, a single central transminer in a distributed transmission system, what maximum or minimum limitations, if any, should be placed on the power and/or antenna height used at each **DTV** booster? Should such boosters be limited to the power values specified for digital **LPTV** stations? What emission mask would be appropriate for **DTV** boosters in a distributed transmission system? Are there identifiable categories of **DTV** booster stations that could be allowed to meet less strict mask requirements?

104. Interference protection. What standards are needed to protect distributed transmission systems from interference and how should those standards be calculated and applied? Should protection accrue to each **DTV** booster's service area or to the aggregate service area from all boosters? What standards are needed to protect other stations from interference from boosters in a distributed transmission system and how should those standards be calculated and applied? Should interfering signals from distributed system boosters be aggregated and, if so, how?

105. Technical standards What standards would be appropriate for boosters in distributed transmission systems with respect to specific technical requirements, such as frequency tolerance, type certification of transmitters, control circuitry and performance measurements? Must technical and operational parameters be specified to assure that a distributed transmission system performs properly? What transmission standards should be set for such systems and how and when should these standards be developed, tested and implemented? What benchmarks are appropriate to determine that the system is performing as designed and what monitoring and measuring equipment and procedures are necessary in order to test, adjust and maintain distributed transmission system equipment in proper operating order?

106. We seek comment generally on whether the Commission should permit the deployment of distributed transmission systems. We ask commenters to specifically address the relevant rules and policies that would have to be put in place to permit distributed transmission systems, and any new or amended forms, policies and/or procedures that would be needed with respect to the Commission's current system for filing, processing and granting television station licenses.

K. DTV Public Interest Obligations

107. Both Congress and the Commission have recognized that digital television broadcasters have an obligation to serve the public interest. Congress established the statutory framework for the transition to digital television in the **1996** Act, making it clear that public interest obligations would continue for broadcasters in the new digital world. In Section **336** of the Act, Congress stated that “[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity.”¹⁴⁴ The Commission also reaffirmed

¹⁴⁴ 47 U.S.C. § 336(d). That section also provides: “In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest.”

that “digital broadcasters remain public trustees with a responsibility to serve the public interest.”¹⁴⁵ and stated that “existing public interest requirements continue to apply to all broadcast licensees.”¹⁴⁶ Under our current rules, commercial television broadcast station licensees must provide coverage of issues facing their communities, and place lists of programming used in providing significant treatment of those issues (issues/programs lists) in the station’s public inspection files on a quarterly basis.¹⁴⁷ Licensees must also maintain in their station’s public inspection files records that substantiate certification of compliance with the commercial limits on children’s programming¹⁴⁸ and quarterly Children’s Television Programming Reports (FCC Form 398) reflecting the licensee’s efforts to serve the educational and informational needs of children.¹⁴⁹

108. It is thus clear that DTV broadcasters must air programming responsive to their communities of license, comply with the statutory requirements concerning political advertising and candidate access, and provide children’s educational and informational programming, among other things. What remains unresolved is how these obligations will apply in the digital environment, and whether they should be applied differently or otherwise adapted to reflect the enhancements available in digital broadcasting.

109. The Commission issued a formal Notice of Inquiry (“NOI”) on DTV public interest obligations in December 1999,¹⁵⁰ followed by two Notices of Proposed Rulemaking in September 2000.¹⁵¹ In the NOI, the Commission sought comment on several issues related to how broadcasters might best

¹⁴⁵ *Fifth Report and Order*, 12 FCC Rcd at 12810, 12811

¹⁴⁶ *Fifth Report and Order*, 12 FCC Rcd at 12830.

¹⁴⁷ 47 C.F.R. § 73.3526(e)(11)(i).

¹⁴⁸ 47 C.F.R. § 73.3526(e)(11)(ii).

¹⁴⁹ 47 C.F.R. § 73.3526(e)(11)(iii). Television and radio broadcast station licensees must also maintain information in their public inspection files on applications, authorizations, citizens agreements, service contour maps, ownership reports, annual employment reports, written correspondence with the public on station operations, material related to Commission investigations or complaints, and certification that the licensee is complying with its requirements for local public notice announcements. *Id.* § 73.3526(e). In addition, broadcast licensees must maintain a separate file within the public inspection file concerning requests by political candidates for broadcast time on the station. *Id.* § 73.3526(e)(6).

¹⁵⁰ *Public Interest Obligations of TV Broadcast Licensees*, MM Docket No. 99-360, Notice of Inquiry, 14 FCC Rcd 21633 (1999). The NOI was guided by proposals and recommendations of the President’s Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (“Advisory Committee”). The Advisory Committee was comprised of a broad cross-section of interests, including “the commercial and noncommercial broadcasting industry, computer industries, producers, academic institutions, public interest organizations, and the advertising community.” See Exec. Order No. 13,038, 62 Fed. Reg. 12,065 (1997). On December 18, 1998, the Advisory Committee submitted a report, which contained ten separate recommendations on the public interest obligations digital television broadcasters should assume. See *Advisory Committee on Public Interest Obligations of Digital Television Broadcasters. Charting the Digital Broadcasting Future. Final Report of the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters (1998) (Advisory Committee Report)*. The report is available at www.ntia.doc.gov/pubintadvcom/pubint.htm.

¹⁵¹ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Notice of Proposed Rulemaking, 15 FCC Rcd 19816 (2000) (“DTV Public Interest Form NPRM”); *Children’s Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, Notice of Proposed Rulemaking, 15 FCC Rcd 21946 (2000) (“Children’s DTV Public Interest NPRM”).

serve the public interest during and after the transition from analog to digital television. Among the areas of inquiry in the *NOI* were questions regarding how broadcasters might make information about how they serve the public interest more accessible to the public.”

110. The *DTV Public Interest Form NPRM* proposed that the Commission adopt rules regarding the disclosure of broadcasters’ activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. In light of the concerns about disclosure expressed in the record of the *NOI*, the *NPRM* proposed to replace the issues/programs list with a standardized form and to enhance the public’s ability to access information on a station’s public interest obligations by requiring broadcasters to make their public inspection files available on the Internet.” It also sought comment on whether licensees should provide a narrative description on the standardized form of the actions taken to assess community programming needs and interests;¹⁵⁴ whether a licensee’s community service activities should be considered in assessing whether the licensee has served the public interest;” and whether the Commission’s tentative conclusion that the standard form need not be tiled with the Commission was appropriate, given that such an approach differs from that taken in the children’s television context.¹⁵⁶

111. The *Children’s DTV Public Interest NPRM* proposed clarifying broadcaster obligations under the Children’s Television Act and related Commission guidelines in a digital television environment. This *NPRM* focused primarily on two areas: the obligation of television broadcast licensees to provide educational and informational programming for children, and the requirement that television broadcast licensees limit the amount of advertising in children’s programs. It sought comment on how the current three-hour children’s core educational programming processing guideline should be applied in light of the many possible ways broadcasters may choose to use their DTV spectrum;” whether the current preemption rules for core educational programming should be revised or adapted for the digital environment;¹⁵⁸ and whether steps should be taken to ensure that programs designed for children or families do not contain age-inappropriate product promotions that are unsuitable for children to watch.”

112. To date, the Commission has not issued **any** decisions in the *DTV Public Interest Form NPRM*, the *Children’s DTV Public Interest NPRM*, or the *NOI*. Given the significant time that has passed since the comment periods in these proceedings were closed, we invite additional comment in those dockets in order to reflect more recent developments. Comments filed addressing issues in the *DTV Public Interest Form NPRM* (MM Docket No. 00-168), *Children’s DTV Public Interest NPRM* (MM Docket No. 00-167), and *NOI* (MM Docket No. 99-360) proceedings should reference the docket numbers in those proceedings, not the docket number of this DTV periodic review proceeding, and should be filed in the

¹⁵² *NOI*, 14 FCC Rcd at 21637, ¶ 9.

¹⁵³ *DTV Public Interest Form NPRM*. 15 FCC Rcd at 19817-19, ¶¶ 5-6.

¹⁵⁴ *Id.*, 15 FCC Rcd at 19825-27, ¶¶ 21-24.

¹⁵⁵ *Id.*, 15 FCC Rcd at 19827, ¶ 25.

¹⁵⁶ *Id.*, 15 FCC Rcd at 19830, ¶ 33.

¹⁵⁷ *Children’s DTV Public Interest NPRM*. 15 FCC Rcd at 22952-56, ¶¶ 14-24.

¹⁵⁸ *Id.*, 15 FCC Rcd at 22956-57, ¶¶ 25-28,

¹⁵⁹ *Id.*, 15 FCC Rcd at 22960-61, ¶¶ 35-37.

same time frame as comments in this periodic review proceeding.¹⁶⁰ We are particularly interested in those issues relating to the application of public interest obligations to broadcasters that choose to multicast (e.g., the application of our children's television rules or the statutory political broadcasting rules in a multicast environment). We are also interested in whether our approach to multicast public interest obligations should vary with the scope of whatever final digital must-carry obligation the Commission adopts. Our goal is to bring these proceedings concerning the public interest obligations of broadcasters in the digital environment to conclusion promptly in order to provide certainty to broadcasters and the public as the digital television transition continues.

L. Other Issues

1. ATSC Standards

113. In the *First DTV Periodic Review Second Report and Order*, we revised our rules to specify that the August 7, 2001, version of the ATSC DTV standard A/53B should be used in place of the September 16, 1995, version originally adopted.¹⁶¹ We also acknowledged the likelihood that there will be further improvements made to the DTV standards over time, and stated our intention to consider incorporation into our rules of proposed changes that reflect the kind of broad industry consensus developed through ATSC's standards-making procedures. Updating the rules to reflect improvements in the standard will benefit both the public and broadcasters by allowing broadcasters to make technical improvements in their service that will enhance the quality of DTV services they provide. We hereby seek comment on whether our rules should be further changed to reflect any revisions to the ATSC DTV standard A/53B since the August 7, 2001, version.

2. PSIP

114. In the *First DTV Periodic Review Second Report and Order*, we stated that we would seek comment on whether the Commission should adopt the ATSC A/65A Program System and Information Protocol ("PSIP") standard into our rules as part of the DTV periodic review process.¹⁶² The PSIP standard provides several different types of information, including channel number identification to facilitate tuning and use of virtual channel numbering, captioning and v-chip features, and program listing and event descriptions. The Commission has recognized the utility that the ATSC PSIP Standard offers for both broadcasters and consumers.¹⁶³ We seek comment on both whether to require use of PSIP and

¹⁶⁰ See ¶ 130, *infra*.

¹⁶¹ *First DTV Periodic Review Second Report and Order*, 17 FCC Rcd at 16001, ¶ 50. We revised Section 73.682(d) of the rules to specify ATSC Doc. A/53B (ATSC Digital Television Standard, 7 Aug. 01), except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table 3" in Section 5.1.1 Table 2 and Section 5.1.2 Table 4. *Id.* ¶ 51.

¹⁶² *Id.* ¶ 55. In the interim we will continue to support and encourage the voluntary use of the PSIP specification by broadcasters and cable operators and its inclusion in consumer electronics equipment. We have included a reference to the ATSC PSIP Standard in Section 73.682(d) of the rules as a document that licensees may consult for guidance. Transport stream identifier ("TSID") assignments will be incorporated into our broadcast television station procedures in the near future. See *First DTV Periodic Review Report and Order*, 16 FCC Rcd at 5971, ¶ 61.

¹⁶³ The channel mapping protocols contained in the PSIP identification stream could resolve issues associated with digital channel positioning. *Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd 2598, 2635 (2001) (petitions for reconsideration pending). See also *First DTV Periodic Review Second Report and Order*, 17 FCC Rcd at 16003, ¶ 55.

which aspects of PSIP should be adopted into our rules. If we decide not to require use of PSIP, it is, nevertheless, important to decide if some or all of the PSIP information set forth in **ATSC A/65A** must be used by those who voluntarily use PSIP. Likewise, are there certain aspects of the PSIP standard that should not be used or required?

115. We seek comment on whether to require broadcasters to include PSIP information with their digital broadcast signals. Is PSIP information essential for the proper functioning of receivers? For example, without PSIP channel numbering information, over-the-air viewers must "direct tune" to the digital station. "Direct tune" means knowing and selecting the over-the-air digital channel. Without PSIP, how could viewers tune to the multiple program streams of stations operating in the multicasting mode? With channel numbering information in the PSIP, viewers can tune to the familiar analog channel number, which will link them to the digital channel. If PSIP information is not used, will digital equipment function properly, or will some equipment search for information that is not provided in the signal and therefore fail to function as intended? For example, if one broadcaster chooses to transmit PSIP channel numbering information, the viewers would find that broadcast station, including the digital signal, using the analog channel number, while another broadcaster in the same market not using PSIP could only be tuned using two different numbers. Does this present a problematic inconsistency for equipment manufacturers, consumers or electronic program guide programmers?

116. We ask for additional comment concerning other information that can be included in the PSIP. Information concerning closed captioning, transport stream identification ("TSID"), viewership tracking data, second audio programming ("SAP"), video description, and other data may be in the programming stream itself. Is that information always in the program stream and in a consistent format? A broadcast station may take that information and construct its PSIP to serve as an index to facilitate access to the information. Do consumer electronic equipment manufacturers build equipment to search both the PSIP and the programming streams for this information? Or do some digital receivers search only in the programming stream or only in the PSIP? What happens if the information is not in the PSIP? Is there a compatibility problem between the broadcaster's construction of its signal and the digital equipment? Would a requirement that all broadcasters construct and transmit PSIP information resolve or avoid such problems? Or would such a requirement create an incompatibility between broadcast signals and digital equipment that does not search for PSIP information?

117. We seek comment on any other aspects of **ATSC A/65A**, if any, that may create difficulties if required. For example, the current ATSC PSIP standard attaches the assignment of "major channel number" values to a broadcaster's current NTSC RF channel number.¹⁶⁴ Will there be circumstances in which a broadcast station does not want to use its current NTSC RF channel number as its "major channel number" for PSIP purposes?¹⁶⁵ We seek comment on whether we should modify the **ATSC** PSIP standard in this regard to allow a licensee to revise its major channel number.

¹⁶⁴ "Program and System Information for Broadcast and Cable." Advanced Television Systems Committee, Doc. A/65A, Rev. A to PSIP for *Terrestrial Broadcast and Cable* ("**ATSC A/65A**"), Annex B, *Assignment of Major Channel Numbers for Terrestrial Broadcast in the U.S.* (May 31, 2000). Pursuant to this Annex, a broadcaster with, for example, an analog NTSC broadcast license for RF channel 13 and a digital **ATSC** RF channel assignment of 39 will use "major channel number" 13 for identification of the analog NTSC channel on RF channel 13, as well as the digital RF channel 39.

¹⁶⁵ For example, a broadcaster with an NTSC RF channel number assignment of 49 and an **ATSC** RF channel number of 12 may prefer to use its digital RF number 12 as its "major channel number."

118. Whether or not we ultimately decide to make the use of PSIP mandatory, we need also to determine whether to require adherence to the PSIP standards in the ATSC A/65A standard for broadcasters that use PSIP.¹⁶⁶ If a broadcast station decides to include PSIP information or if we require the use of PSIP to transmit information, should the requirement apply to all the types of information that ATSC requires in PSIP, or only a subset of them, such as the information concerning v-chip ratings, closed captioning, and channel numbering? For example, in the *First DTV Periodic Review Second Report and Order* the Consumer Electronics Association ("CEA") stated that while it believed that we should adopt the PSIP standard in its entirety in order to maximize the benefits to the public of DTV, we should at a minimum require broadcasters to transmit the System Information component of PSIP. Specifically, it stated that we should require transmission of the Master Guide Table (MGT), System Time Table (STT), Virtual Channel Table (VCT), and Service Location Descriptor at all times and transmission of the Content Advisory and Caption Service Descriptors when a program is rated or captioned.¹⁶⁷ We have attached as Appendix B to this Notice, a list of certain PSIP tables specified in ATSC A/65A. We seek specific comment on the necessity or desirability of requiring broadcasters and manufacturers to adhere to the ATSC A/65A requirements for PSIP. We also request information on the costs to broadcast stations to construct PSIP, as well as costs to equipment manufacturers and consumers to ensure that all digital equipment uses PSIP information.

3. Closed Captioning

119. We seek comment on whether there are additional actions the Commission should take to ensure the accessibility and functioning of closed captioning service for digital television. In the closed captioning rules for digital television receivers, we adopted standards to ensure that DTV receivers have consistently formatted caption data for which to search.¹⁶⁸ Section 79.1 of the Commission's regulations requires all video programming providers to deliver all closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards set out in Part 15 of our regulations.¹⁶⁹ Terrestrial broadcasters following EIA-708-B must include a caption service descriptor in the PMT of the program stream, and also in the EIT if using PSIP.¹⁷⁰ The caption service descriptor is defined by ATSC A/65A and provides information that supplements closed captioning information, such as closed captioning type and language codes for events with closed captioning service.¹⁷¹ EIA-708-B only requires decoders to acquire caption service descriptors from one location and, therefore, decoders may acquire caption service descriptors from the EIT in the PSIP only.¹⁷² We seek comment on whether this difference in requirements permits, or is likely to permit, a situation in which a broadcaster places all of its closed captioning information, including caption service descriptors, in the program stream, but a manufacturer builds its closed captioning equipment to acquire needed information from the PSIP? If this

¹⁶⁶ See ATSC A/65A (May 31, 2000)

¹⁶⁷ See *First DTV Periodic Review Second Report and Order*, 17 FCC Rcd at 16002-3, ¶ 54

¹⁶⁸ *Closed Captioning Requirements for Digital Television Receiver*, 15 FCC Rcd. 16788 (2000) ("DTV Closed Captioning Order"); 47 C.F.R. § 15.122(b) (incorporating by reference EIA-708-B, "Digital Television (DTV) Closed Captioning," Electronic Industries Alliance (Dec. 1999) ("EIA-708-B")).

¹⁶⁹ 47 C.F.R. § 79.1(c)

¹⁷⁰ EIA-708-B, § 4.5.1 (Dec. 1999)

¹⁷¹ See EIA-708-B, § 4.5 (Dec. 1999); ATSC A/65A, § 6.7.3 *Caption Service Descriptor* (May 31, 2000)

¹⁷² EIA-708-B, § 4.5.4 (Dec. 1999).

occurs. what is the effect on closed captioning functionality?

120. In the *DTV Closed Captioning Order*, we believed that some manufacturers would choose to build their products to search for available PSIP data for captioning and other functions, but did not make PSIP a requirement.¹⁷⁴ The **ATSC A/65A** terrestrial broadcast standard requires the caption service descriptor to be in the PSIP and makes optional the presence of the caption service descriptor in the program stream.¹⁷⁴ If broadcasters and manufacturers were all to use PSIP, would that eliminate the situation described above in which decoders look for information where broadcasters have not put the information? We seek comment on whether we should adopt the provisions of the **ATSC A/65A** standard that require all digital television broadcasters to place the caption service descriptor in the PSIP. If we do so, how would this requirement interact with the requirements of EIA-708-B, Section 79.1 and Section 15.122?

4. V-Chip

121. We seek comment on whether the Commission needs to do more to ensure that v-chip functionality is available in the digital world. For example, the **ATSC A/65A** terrestrial broadcast standard requires that v-chip program rating information, when present, to be in the PSIP, and makes optional the presence of the rating information in the program stream.¹⁷⁵ Some broadcasters may be providing rating information in one or both of the methods described in the standard within their digital broadcast,¹⁷⁶ and may continue to do so in the future. We are concerned that without a specific requirement, broadcasters and equipment manufacturers will not follow a standard for broadcast of program rating information and that lack of compatibility between ratings information and equipment may in some instances result in the failure of the blocking functionality that the v-chip provides. Therefore, we seek comment on whether the Commission should adopt the provisions of the **ATSC A/65A** standard that requires all digital television broadcasters to place v-chip rating information in the PSIP. Is it necessary to likewise require equipment manufacturers to develop equipment that access program rating information in the PSIP, or are consumer electronics manufacturers already developing digital televisions that access program rating information in the **PSIP** or both locations?¹⁷⁷ What are the

¹⁷¹ *DTV Closed Captioning Order*, 18 FCC Rcd at 16801, ¶ 36. Section 15.122 also specifies requirements for decoders relying on PSIP data to implement closed captioning. See 47 C.F.R. § 15.122(c)(2).

¹⁷⁴ **ATSC A/65A**, § 6.7 *Core Descriptors*, Table 6.16, (May 31, 2000).

¹⁷⁵ *Id*

¹⁷⁶ Although the Communications Act requires all television receivers be equipped with technological features (v-chip) to enable program blocking when program rating information is sent by a broadcaster, we have refrained from promulgating regulations requiring delivery of the codes necessary for operation of the v-chip based upon the voluntary assumption of this responsibility by video program distributors. *Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996: Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd. 11248, 11259 (1998) ("V-chip Order"). See also 47 U.S.C. §§ 303(x), 330(c)(4).

¹⁷⁷ In the *V-chip Order*, we stated that we expected manufacturers to soon begin to design their televisions to accommodate the program ratings pursuant to the **ATSC Standard A/65**. Accordingly, we set a deadline for the inclusion of program blocking technology in all televisions by January 1, 2000. We did not specify that the **A/65** standard was mandatory, but required digital televisions to react in a similar manner as analog televisions when programmed to block specific rating categories. 13 FCC Rcd. at 11258-11259, ¶¶ 25-29. See also 47 C.F.R. § 15.120.

advantages of having this information only in PSIP? Alternatively, if we do not adopt the ATSC A/65A terrestrial broadcast standard as it pertains to provision of v-chip program rating information, should we require carriage of this information in the program stream which is currently optional under ATSC A/65A? We note that CEA has filed a petition for rulemaking asking the Commission to incorporate standards **EIA-766** and **EIA-708-B** into Section 15.120 of our rules in order to establish uniformity for v-chip compliance in digital receivers.¹⁷⁸ We seek comment on CEA's proposal, including the adoption of particular standards that are necessary and appropriate, and the timing of any such mandate. The **PSIP** also carries the Rating Region Table ("RRT"), which describes the content advisory rating system being used.¹⁷⁹ Use of the RRT would support future modifications to the content advisory rating system. We generally believe that the ability to modify the content advisory system is beneficial, and seek comment on whether and how the Commission should ensure that such flexibility is maintained in any standard it adopts. Under the **ATSC A/65A** standard, the RRT is not carried in the program stream. If we do not require broadcasters to use PSIP, how will the information contained in the RRT be conveyed to television receivers?

122. The CEA petition asks the Commission to apply v-chip rules only to 16:9 aspect ratio television receivers that are 7.8 inches or greater in height, a measurement comparable to a 13-inch analog receiver. With respect to the screen size to which the v-chip requirement applies, we note that the Commission has used the 7.8 inch reference in other contexts relating to digital receivers.¹⁸⁰ We seek comment on whether there is any reason to depart from that reference and use a different size standard for v-chip requirements. We also seek comment on whether the Commission should specify additional v-chip requirements for digital television receivers.

5. TV Translators

123. We also request comment on issues concerning the implications of PSIP for the operation of TV translator facilities. A TV translator rebroadcasts the programs and signals of a primary (full service) TV station, but on a different channel. The Commission intends to initiate a proceeding in the near future examining issues related to the authorization of digital translators and boosters. In the case of PSIP information, the channel number/frequency carried on a translator's primary station signal will be different from the channel on which the translator broadcasts. In order for DTV sets receiving service from a translator to function properly, the PSIP information on the signal needs to include the channel/frequency of the translator. When a DTV translator is paired with an analog translator, its PSIP information needs to include the channel of the analog translator as well. We request comment on how the proper PSIP information is to be provided on TV translator rebroadcasts and who will be responsible for ensuring that that information is so provided. We also request comment regarding the costs of providing PSIP information on TV translators as well as any other concerns that translator operators might have in

¹⁷⁸ *Set, Expedited Petition for Rulemaking*, filed in ET Docket No. 97-206, RM 9832 (Jan. 12, 2000) (A copy of this Petition for Rulemaking has been included in the docket of this proceeding). Matsushita Electric Corporation of America and Thomson Consumer Electronics, Inc. filed comments in support of CEA's petition.

¹⁷⁹ Without the information in the RRT, the program rating icons (e.g., TV-Y7 or PG-13) will be displayed, but the explanations of the icons may not.

¹⁸⁰ *See, e.g., First DTV Periodic Review Second Report and Order*, 17 FCC Rcd at 15996, ¶ 40 (adopting broadcast DTV tuner requirement to receivers measuring at least 7.8 inches vertically, and noting that approach was the same as the Commission adopted for inclusion of closed captioning capability in DTV receivers in ET Docket No. 99-254).

implementing PSIP on their DTV operations.¹⁸¹

6. DTV Station Identification

124. The Commission has received a number of inquiries from licensees asking about station identification requirements for DTV stations. Under our current rules, television stations are required to make station identification announcements at the beginning and end of each time of operation as well as hourly.¹⁸² Official station identification may be made visually or aurally, and must consist of the station's call letters immediately followed by the community or communities specified in the station's license as the station's location.¹⁸³ Either or both the name of the licensee and the station's channel number may be inserted between the call letters and the station location, but no other insertion is permissible.¹⁸⁴

125. In general, we propose to require digital television stations to follow the same rules for station identification as analog television stations. Recognizing that channel number identification is not currently required for all television stations by our rules, we ask whether channel identification should be required for DTV stations? If station identification announcements include channel numbers, we request comment on whether our rules should specify which channel number stations should use: the major (analog) channel number, minor (digital) channel number, or over-the-air channel number. Stations considering multicasting have raised concerns about separate identification of their separate digital programming streams for purposes of obtaining audience ratings. While we are not inclined to assign separate call signs for additional program streams for stations that choose to multicast, we propose to permit such stations to include additional information in their station announcements identifying each program stream. For example, stations could number their digital program streams (e.g., "WXXX-DT Channel 7.1" and "WXXX-DT Channel 7.2," where 7 is the number of the station's analog channel) or provide other information in the station announcement identifying the program service (e.g., "WXXX-DT your WB network channel"). We invite comment generally on this approach and on the type of identifying information we should permit to be included in station identification announcements to distinguish among different program streams.

126. For stations simulcasting their analog programming on the digital channel, we propose to permit station identification announcements to be made simultaneously for both stations as long as the identification includes both call signs (e.g., "WXXX-TV and WXXX-DT") if it is intended to serve as the identification for both stations.¹⁸⁵ Is such an approach during the transition advisable for television broadcasters? Alternatively, should stations be required to identify analog and digital stations separately?

¹⁸¹ We further note that a similar issue arises with cable service when a broadcast DTV signal or its associated analog signal is carried on a cable system on a channel that is different from its broadcast signal. PSIP in the context of cable carriage is a topic in the pending DTV Must Carry Proceeding, Docket No. 98-120.

¹⁸² 47 C.F.R. § 73.1201(a).

¹⁸³ 47 C.F.R. § 73.1201(b). Digital television stations have been assigned the same call letters as their associated analog TV stations, except that the digital station is identified with the suffix "DT."

¹⁸⁴ *Id.* Television satellite stations must include in their station identification announcements the number of the channel on which each station is operating. 47 C.F.R. § 73.1201(c)(3)(i).

¹⁸⁵ Our rules currently allow co-owned AM/FM radio stations licensed to the same community simultaneously broadcasting the same programming on both stations to make joint station identification announcements for both stations. 47 C.F.R. § 73.1201(c)(2).

We invite comment on these proposals

7. Satellite Stations

127. TV satellite stations are full power terrestrial broadcast stations authorized under Part 73 of the Commission's Rules to retransmit all or part of the programming of a parent station that is typically commonly owned. "The Commission first authorized TV satellite operations in small or sparsely populated areas, which were deemed to have economic bases insufficient to support stand-alone, full-service operations."¹⁸⁶ The Commission later authorized satellite stations in larger markets when the applicant demonstrated that the proposed satellite could not operate as a stand-alone, full-service station."¹⁸⁸ The Commission has also allowed a full-service station to convert to a satellite operation, upon a showing that the community no longer has a sufficient economic base to support a full-service operation.¹⁸⁸ Because satellite stations, by definition, operate in small or sparsely populated areas which have insufficient economic bases to support full-service operations, we seek comment on whether the public interest would be served by allowing such stations to turn in their digital authorization and "flash-cut" to DTV transmission at the end of the transition period. We request comment on the advantages and disadvantages of granting this special designated status to satellite stations, specifically whether it will hinder the overall transition to digital television and harm viewers by delaying their access to digital signals, or whether disallowing such status will overly burden satellite stations financially.

128. We also invite comment on whether allowing satellite stations to "flash-cut" to digital would present legal impediments to satisfying 309(j)(14). Could a satellite station broadcasting the programming of a top-four TV network be considered a station "licensed to or affiliated with" a top-four TV network under Section 309(j)(14)(B)(i), thus requiring that the satellite be broadcasting in digital before analog service is required to cease in the market? Or should we consider only whether a top-four TV network's non-satellite affiliate in the market is broadcasting in digital? We note that we have proposed to interpret Section 309(j)(14)(B)(i) to require that all stations in the market licensed to or affiliated with a top-four TV network be broadcasting in digital before analog service must cease in the market, even if a top-four network has more than one affiliate in the market.¹⁸⁹ If allowing all satellite stations to "flash-cut" could delay the transition indefinitely in certain markets under Section 309(j)(14)(B), an alternative would be to permit satellite stations to apply to "flash-cut" on a case-by-case basis. We invite comment on this approach.

V. ADMINISTRATIVE MATTERS

129. *Ex Parte Rules.* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

130. *Comment Information.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,

¹⁸⁶ *See, e.g., Authorization of UHF Stations*, 43 FCC 2734 (1954)

¹⁸⁷ *Suburban Broadcasting Corp.*, 83 FCC 2d 359, 365-66 (1980)

¹⁸⁸ *See, e.g., Central Minnesota Television, Inc.*, 2 FCC Rcd 6730 (1987); *Television Satellite Stations*, 6 FCC Rcd 4212, 4213-4214 (1991) (subsequent citations omitted).

¹⁸⁹ *See* discussion of Section 309(j)(14)(b)(i), *supra*, section H.

47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **April 14, 2003**, and reply comments on or before May 14, **2003**. Comments filed addressing issues in the *DTV Public Interest Form NPRM* (MM Docket No. 00-168), *Children's DTV Public Interest NPRM* (MM Docket No. 00-167), and *NOI* (MM Docket No. 99-360) proceedings should also be filed by these dates and should reference the docket numbers in those proceedings, not the docket number of this DTV periodic review proceeding. Commenters wishing to address both public interest issues and other issues raised in the DTV periodic review should put their public interest comments in a separate document to be filed in the appropriate public interest docket(s) and file their comments on other issues raised in the periodic review in the docket number of this proceeding (MB 03-15; RM 9832). Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer & Governmental Affairs Bureau, at (202)418-7426, TTY (202) 418-7365, or at bmillin@fcc.gov.

131. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers are referenced in the caption of the comments, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of the comment, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission,

132. *Initial Paperwork Reduction Act Analysis.* This *Notice of Proposed Rulemaking* ("Notice") may contain either proposed or modified information collections subject to the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork burdens, we invite OMB, the general public, and other Federal agencies to take this opportunity to comment on the information collections contained in this *Notice*, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on the *Notice*. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques

or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room C-1804, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to Kim.A.Johnson@omb.eop.gov.

133. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act,¹⁹⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this *of Proposed Rulemaking*. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA.

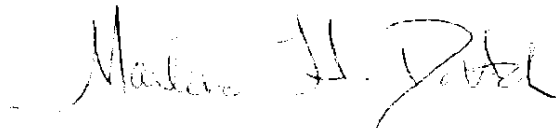
134. *Additional Information.* For additional information on this proceeding, please contact Kim Manhews, Policy Division, Media Bureau at (202) 418-2154, or Peter Corea, Policy Division, Media Bureau at (202) 418-7931.

VI. ORDERING CLAUSES

135. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) & (j), 303, 307, 309 and 336, this Notice of Proposed Rule Making IS ADOPTED.

136. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act."

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹⁹⁰ See 5 U.S.C. § 603.

¹⁹¹ See 5 U.S.C. § 603(a)

APPENDIX A INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA"),¹⁹² the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in paragraph 130. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹⁹³ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.¹⁹⁴

A. Need for and Objectives of the Proposed Rules. As described in the Notice, the proposed rules are required to ensure a smooth transition of the nation's television system to digital television. Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions, including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period, after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006. The Commission is permitted to extend that deadline for any station in a market if one or more of three conditions exist, including if more than 15 percent of viewers will be left without service from 1) a digital television receiver; 2) an analog television receiver equipped with a digital/analog converter; or 3) a multi-channel video provider that carries local broadcast stations. We have specifically invited comment on: (1) establishing deadlines for channel election, service replication and maximization for in-core channels; (2) interference protection for out-of-core channels; (3) how to revise the simulcasting requirements; (4) how to determine whether a particular market meets the digital service requirements necessary for the return of analog spectrum; (5) whether to allow certain technologies to be used to supplement digital transmissions; and (6) whether to require broadcasters and equipment manufacturers to follow uniform engineering standards.

137. *Additional Considerations and Requests for Comment.* The Commission issued two Notices of Proposed Rulemaking on DTV public interest obligations in September 2000.¹⁹⁵ The *DTV Public Interest Form NPRM* proposed that the Commission adopt rules regarding the disclosure of broadcasters' activities in the public interest, essentially putting the contents of the public file on the Internet to make it more accessible to viewers. The *Children's DTV Public Interest NPRM* proposed

¹⁹²See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹⁹³See 5 U.S.C. § 603(a).

¹⁹⁴See *id.*

¹⁹⁵ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168, Notice of Proposed Rulemaking, 65 Fed. Reg. 62683, (2000) (*DTV Public Interest Form NPRM*); *Children's Television Obligations of Digital Television Broadcasters*, MM Docket No. 00-167, Notice of Proposed Rulemaking, 65 Fed. Reg. 66951 (2000) (*Children's DTV Public Interest NPRM*).

clarifying broadcaster obligations under the Children's Television Act and related Commission guidelines in a digital television environment. Given the time that has passed since the comment periods in the *DTV Public Interest Form NPRM*, and the *Children's DTV Public Interest NPRM* the Commission has invited additional comments in those dockets in order to reflect more recent developments.¹⁹⁶ Both previous NPRMs contained IRFAs.¹⁹⁷

B. Legal Basis. The authority for the action proposed in this rulemaking is contained in Sections 4(i) & (j), 303, 307, 309 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) & (j), 303, 307, 309 and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.¹⁹⁸ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity."¹⁹⁹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁰⁰ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").²⁰¹

In this context, the application of the statutory definition to television stations is of concern. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and therefore might be over-inclusive.

An additional element of the definition of "small business" is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses might therefore be over inclusive.

Television Broadcasting. The proposed rules and policies could apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a

¹⁹⁶ See Notice ¶ 112, *supra*

¹⁹⁷ *DTV Public Interest Form NPRM*, 65 Fed. Reg. at 62688; *Children's DTV Public Interest NPRM*, 65 Fed. Reg. at 66958.

¹⁹⁸ 5 U.S.C. § 603(b)(3).

¹⁹⁹ 5 U.S.C. § 601(6).

²⁰⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²⁰¹ 15 U.S.C. § 632.

television broadcasting station that has no more than \$12 million in annual receipts as a small business.²⁰² Television broadcasting consists of establishments primarily engaged in broadcasting images together with sound, including the production or transmission of visual programming which is broadcast to the public on a predetermined schedule.²⁰³ Included in this industry are commercial, religious, educational, and other television stations.²⁰⁴ Also included are establishments primarily engaged in television broadcasting and which produce programming in their own studios.²⁰⁵ Separate establishments primarily engaged in producing programming are classified under other NAICS numbers.²⁰⁶

There were 1,509 television stations operating in the nation in 1992.²⁰⁷ That number has remained fairly constant as indicated by the approximately 1,686 operating television broadcasting stations in the nation as of September 2001.²⁰⁸ According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.²⁰⁹ Of this total, 734 firms had annual receipts of \$ 9,999,999.00 or less, and an additional 71 had receipts of \$10 million to \$24,999,999.00.²¹⁰ Thus, under this standard, the majority of firms can be considered small.

Cable and Other Program Distribution. The SBA has developed a small business size standard

²⁰² 13 C.F.R. § 121.201 (North American Industry Classification System ("NAICS") Code 513120).

²⁰³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Source of Receipts, Information Sector 5 I, Appendix B at B-7-8 (2000).

²⁰⁴ *Id.* See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833)" as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

NAICS Code 513120, by its terms, supercedes the former SIC Code 4833, but incorporates the foregoing inclusive definitions of different types of television stations. See Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Source of Receipts, Information Sector 5 I, Appendix B at B-7-8 (2000).

²⁰⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Source of Receipts, Information Sector 5 I, Appendix B at B-7 (2000).

²⁰⁶ NAICS Code 512110 (Motion Picture and Video Production); NAICS Code 512120 (Motion Picture and Video Distribution); NAICS Code 512191 (Teleproduction and Other Post-Production Services); NAICS Code 512199 (Other Motion Picture and Video Industries).

²⁰⁷ FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, Appendix A-9.

²⁰⁸ FCC News Release, Broadcast Station Totals as of September 30, 2001 (rel. Oct. 30, 2001).

²⁰⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 5 I, Table 4 at 49 (2000).

²¹⁰ *Id.*

for cable and other program distribution services, which includes all such companies generating \$12.5 million or less in revenue annually.” This category includes, among others, cable operators, direct broadcast satellite (“DBS”) services, home satellite dish (“HSD”) services, multipoint distribution services (“MDS”), multichannel multipoint distribution service (“MMDS”), Instructional Television Fixed Service (“ITFS”), local multipoint distribution service (“LMDS”), satellite master antenna television (“SMATV”) systems, and open video systems (“OVS”). According to Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue.” We address below each service individually to provide a more precise estimate of small entities.

Cable Operators. The Commission has developed, with SBA’s approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission’s rules, a “small cable company” is one serving fewer than 400,000 subscribers nationwide.” We last estimated that there were 1,439 cable operators that qualified as small cable companies.²¹⁴ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *Notice*.

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is “a cable operator that, directly or through an affiliate, serves in the aggregate less than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”²¹⁵ The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²¹⁶ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.²¹⁷ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

²¹¹ 13 C.F.R. § 121.201 (NAICS Code 513220). This NAICS Code applies to all services listed in this paragraph.

²¹² Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series— Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²¹³ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd. 7393 (1995).

²¹⁴ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²¹⁵ 47 U.S.C. § 543(m)(2).

²¹⁶ 47 C.F.R. § 76.1403(b).

²¹⁷ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

Direct Broadcast Satellite (“**DBS**”) Service. Because DBS provides subscription services, *DBS* falls within the SBA-recognized definition of Cable and Other Program Distribution services.” This definition provides that a small entity is one with \$12.5 million or less in annual receipts.” There are four licensees of DES services under Part 100 of the Commission’s Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.” The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated. Therefore, we will assume all four licensees are small, for the purpose of this analysis.

Home Satellite Dish (“**HSD**”) Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution services.²²¹ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.²²² The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.” HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.²²⁴ As noted, *supra*, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

Multipoint Distribution Service (“MDS”), Multichannel Multipoint Distribution Service (“**MMDS**”) Instructional Television Fixed Service (“**ITFS**”) and Local Multipoint Distribution Service (“**LMDS**”). MMDS systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS.²²⁵ LMDS is a fixed broadband

²¹⁸ 13 C.F.R. § 121.201 (NAICS Code 513220)

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ 13 C.F.R. § 121.201 (NAICS Code 513220).

²²² *Id.*

²²³ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 12 FCC Rcd 4358,4385 (1996) (“*Third Annual Report*”).

²²⁴ *Id.* at 4385

²²⁵ *Amendment of Parts 21 and 71 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 10 FCC Rcd at 9589, 9593 (1995) (“*ITFS Order*”).

point-to-multipoint microwave service that provides for two-way video telecommunications.”

In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years.” This definition of a small entity in the context of MDS auctions has been approved by the SBA.²²⁸ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (“BTAs”). Of the 67 auction winners, 61 met the definition of a small business. In addition, MDS includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts.” This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, using the SBA small business size standard, we find that there are approximately 850 small MDS providers.

The SBA definition of small entities for Cable and Other Distribution services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS.²³⁰ There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.” However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined “small entity” for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.²³² An additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding calendar years.²³³ These regulations defining “small entity” in the context of LMDS auctions have been approved by the SBA.²³⁴ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning

²²⁶ See *Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997) (“*LMDS Order*”).

²²⁷ 47 C.F.R. § 21.961(b)(1).

²²⁸ See *ITFS Order*, 10 FCC Rcd at 9589.

²²⁹ 13 C.F.R. § 121.201 (NAICS Code 513220).

²³⁰ *Id.*

²³¹ SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

²³² See *LMDS Order*, 12 FCC Rcd at 12545.

²³³ *Id.*

²³⁴ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for Cable and Other Program Distribution services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts.²³⁵ Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.²³⁶ Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.²³⁷ The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000-4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. As noted, *supra*, for the category Cable and Other Program Distribution, most of providers of these services are considered small.

Open Video Systems ("OVS"). Because OVS operators provide subscription services,²³⁸ OVS falls within the SBA-recognized definition of cable and other program distribution services.²³⁹ This definition provides that a small entity is one with \$ 12.5 million or less in annual receipts.²⁴⁰ The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment²⁴¹ as well as radio and television broadcasting and wireless communications equipment.²⁴² These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes

²³⁵ 13 C.F.R. § 121.201 (NAICS Code 513220).

²³⁶ See *Third Annual Report*, 12 FCC Rcd at 4403-4.

²³⁷ See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 17 FCC Rcd 1244, 1281 (2001) ("*Eighth Annual Report*").

²³⁸ See 47 U.S.C. § 573.

²³⁹ 13 C.F.R. § 121.201 (NAICS Code 513220).

²⁴⁰ *Id.*

²⁴¹ 13 CFR § 121.201 (NAICS Code 334310).

²⁴² 13 CFR § 121.201 (NAICS Code 334220).

applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.²⁴³

Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.²⁴⁴ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SRA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.²⁴⁵ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.²⁴⁶ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SRA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers. The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.²⁴⁷ Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.²⁴⁸ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements. At this time, we do not expect that the proposed rules would impose any significant additional recordkeeping or recordkeeping requirements. While the requirements proposed in the Notice

²⁴³ 13 CFR § 121.201 (NAICS Code 334310).

²⁴⁴ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁴⁵ 13 C.F.R. § 121.201 (NAICS Code 515220).

²⁴⁶ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁴⁷ 13 C.F.R. § 121.201 (NAICS Code 334111).

²⁴⁸ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

could have an impact on consumer electronics manufacturers and broadcasters, such impact would be similarly costly for both large and small entities. We seek comment on whether others perceive a need for more extensive recordkeeping and, if so, whether the burden would fall on large and small entities differently.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁴⁹

The deadlines we proposed for replication and maximization for in-core channels would give the largest commercial stations in the largest markets on in-core channels three years to acquire necessary financing, develop business plans, and expand their digital service areas. Taking into consideration smaller-market commercial stations, smaller commercial stations in larger markets, and noncommercial DTV licensors, which may face greater obstacles in moving towards full replication or service maximization, we proposed alternative replication and maximization deadlines allowing close to the maximum time under the current statutory transition period to complete their replication and maximization facilities.²⁵⁰ We welcome comment on modifications of the proposals if such modifications might assist small entities and especially if such are based on evidence of potential differential impact.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

²⁴⁹ 5 U.S.C. § 603

²⁵⁰ See Notice ¶ 33, *supra*. For DTV channels within the core spectrum, we propose to set new replication and maximization protection dates close to the end of the transition: for the top-four network affiliates (*i.e.*, ABC, CBS, Fox and NBC) in markets 1-100 - July 1, 2005; and for all other commercial DTV licensees as well as noncommercial DTV licensees - July 1, 2006.

APPENDIX B **LIST OF PSIP TABLES**

ATSC A/65 requires the following tables to be included in the PSIP:

System Time Table (STT) - Provides a standard time and day in seconds to enable the receivers to display the program schedules and manage other operations such as converting the time according to the different time zones

Rating Region Table (KRT) - Defines the different rating tables for different regions and countries and would be used to provide the complete explanation of the rating that's been assigned to a particular program. For example, the U.S. RRT would contain the MPAA ratings and TV Parental Guideline ratings. The ratings in the RRT are referenced by the content advisory descriptors in the EIT.

Master Guide Table (MGT) - Defines the attributes of all the remaining PSIP tables

Terrestrial Virtual Channel Table (TVCT) - Provides tuning and navigation information for the different programs in the broadcast signal (e.g. major & minor channel numbers, TSID). It provides linkage to the EIT so that the scheduled events can be presented accordingly. The TVCT also can contain information that describes the broadcaster's associated analog channel.

Event Information Table (EIT) - Lists all available events for a 3-hour time segment for a particular virtual channel. A/65 requires that the current and next 3 EITs exist for each virtual channel (i.e. EIT-0 lists the current 3 hour segment, EIT-1, EIT-2 and EIT-3 list the next 9 hours of events). For example, EIT-0 would list the 12pm-3pm events; EIT-1 would list the 3pm-6pm events and so on. The STT (above) is needed to ensure that the correct EIT information is being associated with a program. Optionally, a broadcaster can choose to put in EITs all the way up to EIT-127. Note: The EITs also contain the **AC-3** audio descriptor, caption service descriptor and content advisory descriptor for each event and are mandatory in the EIT. The caption service and content advisory descriptors may optionally be present in the PMT table associated with each television program.

The following table is optional under A/65.

Extended Text Tables (ETT) - Long text message describing the event

The following two tables are part of an amendment to A/65 and are also optional:

Directed Channel Change Table (DCCT) - Carries information necessary to perform a channel change to be performed at a time specified by the broadcaster.

Directed Channel Change Selection Code Table (DCCST) - Permits a broadcast program categorical classification table to be downloaded for use by some Directed Channel Change Requests.

Separate Statement of
Commissioner Michael J. Copps

Re: Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital, MB Docket No. 03-13; RM9832; MM Docket Nos. 99-360, 00-167, 00-168

I am happy to support this effort to review the progress of and facilitate the country's transition to digital television. There is no question that DTV is the wave of the future: Congress has mandated the return of analog spectrum and the transition to digital broadcasting; this Commission and its Chairman are committed to moving the transition forward; and there are already some 800 stations across the country broadcasting digital signals.

While the transition still has a significant distance to travel, I am pleased that we have been making some real progress in recent months, with broadcaster and cable commitments to digital Programming, Commission action looking to phase-in requirements for digital television tuners, and the industry's recent agreement on action to address cable compatibility issues. My sense is that we are moving faster now than we were a year ago.

In spite of all this progress, there has been a tremendous void – a glaring gap – covering the DTV transition. It is answering the question: What are the obligations of broadcasters in making sure that digital television, when it comes, will serve the public interest?

Today, we begin to fill that void with this proceeding. I am particularly pleased that we were able to reach consensus to refresh the record in the Commission's long-dormant proceedings on the public interest obligations of broadcasters in the DTV environment.

In March 1997, President Clinton ordered the creation of an Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, a group comprised of commercial and non-commercial broadcasters, producers, academics, representative of public interest organizations and the advertising community. In December 1998, the Advisory Committee submitted its report. That report contained ten separate recommendations on public interest obligations that digital television broadcasters could assume.

The Commission issued a formal Notice of Inquiry in December 1999, followed by two Notices of Proposed Rulemaking the next year. The NOI was guided by proposals and recommendations of the Advisory Committee, and sought comment on several issues related to how broadcasters might best serve the public interest during and after the transition from analog to digital television. The NPRMs sought more specific comment on two of the Advisory Committee's ideas. One was putting broadcasters' public files on the Internet, and the other concerned broadcaster obligations under the Children's Television Act.

Here, we take a stride towards calling the public interest issues forward and according them the high priority they deserve, and must have, if DTV is to serve the interests of the American people. I firmly believe that these issues deserve priority attention at the Commission. In the final analysis, these outstanding DTV public interest proceedings are many times more important than digital tuners and set-top boxes.

There are many questions that cry out for discussion and decision. I will reference only a few here. If a station carries programming that serves the needs of the community on one of its multicast

channels. has it met its obligation to serve the needs of its local community even if other multicast channels carry no such programming? Can a station carry its weekly three hours of children's programming exclusively on one multicast channel? How do statutory political broadcasting rules apply in a multicast environment? flow. indeed, do we use this promising technology for the greater benefit of our people – *all* of our people?

In addition to ensuring that the public interest is served through digital television, clarifying DTV public interest obligations is also a matter of providing certainty to broadcasters so they can be about the job of planning how they will use this additional programming opportunity. The Commission has an obligation to the industry, as well as to the public, to complete action on these pending proceedings and to consider what other initiatives might be taken. given that more than two years have passed since much of anything has happened on this issue.

The opportunities of this digital medium are nothing short of spectacular in terms of innovation, encouraging localism and diversity, enhancing education, encouraging public discourse and strengthening our democracy. I thank my colleagues for joining me in bringing this discussion back to the fore, and I look forward to continuing to work with industry, consumer groups, my colleagues and others to bring them to conclusion. I strongly urge all stakeholders – that is, *all Americans* – to take part in this important discussion. These are hugely important months for broadcasting in America, particularly in the context of our ongoing broadcast ownership proceedings. The item before us today can help us set a course for television to truly serve the public interest as it deploys this promising new digital technology.

Separate Statement of
Commissioner Jonathan S. Adelstein

*Re: Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital
MB Docket No. 03-15; RM9832; MM Docket Nos. 99-360, 00-167, 00-168*

I fully support the Commission's efforts to review the progress of the digital transition. In facilitating that transition, the Commission's primary concern must be to protect the interests of the American consumer. Above all, we must ensure that the public continues to have access to free, over-the-air broadcasting in the digital world, so that broadcasting will remain the vital source of news, information, and programming for all Americans that it is today.

The digital age promises consumers a host of innovative services, from high definition programming with compact disc quality sound to ancillary data services. I support an aggressive but realistic deployment schedule to hasten the arrival of that digital promise. The Commission must do all it can to accelerate the availability of digital broadcast signals, stimulate demand for new digital equipment and programming, and permit the recovery of valuable spectrum currently allocated to broadcast service.

The Commission has a particularly significant role to play in defining broadcasters' public interest obligations in a digital world. Congress has made clear that the public interest obligations that originated in the analog era will carry over to the digital era, but we have yet to resolve precisely how those obligations will apply. I am pleased that the Commission has raised the public interest issues as part of its periodic review process, thereby reflecting the importance of these issues to a successful digital transition. I encourage parties to accept our invitation to refresh the records in the pending public interest proceedings and look forward to their prompt resolution.

Ultimately, a successful digital transition depends upon everyone working together to serve consumers. This will not be easy, as the history of this transition has often demonstrated. But I am encouraged by the constructive spirit I have seen on all sides since I joined the Commission. I look forward to working with industry, consumer groups, and others as we continue to chart a transition that is as rapid and smooth as possible for the American public.